

INTERNAL POLICY DIRECTIVE 2005-2

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SINGLE BUSINESS TAX -- SECTION 23(f) Mobile Tangible Asset

POLICY ISSUE

Do trailers qualify as mobile tangible assets as defined by MCL 208.23(f)(i)?

POLICY DETERMINATION

Yes. Trailers that meet the requirements of Section 23(f)(i) qualify as a mobile tangible asset.

DISCUSSION

MCL 208.23(f) authorizes a taxpayer to "deduct the cost, including fabrication and installation, paid or accrued in the taxable year of mobile tangible assets of a type that are, or under the internal revenue code will become, eligible for depreciation, amortization, or accelerated capital cost recovery for federal income tax purposes."

Section 23(f) continues by indicating what qualifies as a mobile tangible asset. Pursuant to Section 23(f)(i), "motor vehicles that have a gross vehicle weight rating of 10,000 pounds or more and are used to transport persons for compensation or property" qualify as a mobile tangible asset.

As a result, if a trailer meets the definition of a motor vehicle, has a gross weight rating of 10,000 pounds or more and it is used to transport persons for compensation or property, it qualifies as a mobile tangible asset for purposes of Section 23 of the Single Business Tax Act (the SBTA).

The SBTA does not define the term motor vehicle; therefore, Section 2(2) of the SBTA requires that we apply the same meaning for the term as that used in laws of the United States as they relate to federal income taxes. However, the federal meaning is to be adopted only if it is used in a comparable context to the SBTA's use of the term.

Federal laws relating to income are not consistent in their use of the term motor vehicle. In fact, in some instances the federal laws exclude trailers and others include trailers when discussing the term motor vehicle. For example, Internal Revenue Code Section 4481(a) recognizes a distinction between a motor vehicle and a trailer. Section 4481 states:

A tax is hereby imposed on the use of any highway motor vehicle which (together with the semitrailers and trailers customarily used in connection with highway motor vehicles of the same type as such highway motor vehicle) has a taxable gross weight of at least 55,000 pounds at the rate specified in the following table:

In contrast, Internal Revenue Code Section 7701(h)(2)(A) appears to include a trailer as a motor vehicle. Section 7701(h)(2)(A) states:

The term "qualified motor vehicle operating agreement" means any agreement with respect to a motor vehicle (including a trailer) which meets the requirements of subparagraphs (B), (C), and (D) of this paragraph.

As a result the federal use of the term motor vehicle does not provide clear guidance.

When the federal laws of the United States do not provide guidance the rules of statutory construction normally require the use of the ordinary meaning of a term. The Random House Webster's College Dictionary, December 2000 Edition (Random House) defines motor vehicle as an "automobile, truck, bus or similar motor-driven conveyance." Random House defines the term truck to include large motor vehicles "used for carrying goods and materials, consisting either of a single self propelled unit or of a trailer vehicle hauled by a tractor unit." Conversely, the American Heritage Dictionary, Second College Edition, defines a motor vehicle as "[a] self-propelled, wheeled conveyance that does not run on rails." Under this definition a trailer would not qualify as a motor vehicle. Based on the varying definitions of motor vehicle found in common dictionaries, it is clear that the ordinary meaning of the term motor vehicle is not settled.

However, tax laws are often extended to technical fields and the commercial background, trade meaning and commercial usage of the term are relevant when performing statutory construction. See Sutherland, Statutory Construction, 5th Edition, Sec. 66.03. In the instant case, the term motor vehicle was arguably used by the Michigan Legislature in a technical or commercial manner. As a result it is reasonable to look to the commercial or trade meaning of the term. Michigan's Motor Carrier Act, being MCL 475.1(a) defines a motor vehicle in the following manner:

Motor vehicle means any automobile, truck, **trailer, semitrailer**, truck tractor, road tractor, or any self-propelled or motor or mechanically driven vehicle, **or any vehicle in anywise attached to, connected with, or drawn by any self-propelled or motor or mechanically driven vehicle**, used upon any public highway of this state for the purpose of transporting property. (Emphasis added).

Based on the Motor Carrier Act, a trailer is a motor vehicle.

Accordingly, due to the varied definitions of the term motor vehicle and due to the legislature's use of the term in a tax statute (Michigan's Single Business Tax Act) dealing with business activity, it is logical to adopt the commercial or technical definition of the term motor vehicle. Therefore, for purposes of Section 23(f)(i) of Michigan's SBTA a trailer that has a gross vehicle weight rating of 10,000 pounds or more and is used to transport persons for compensation or property, which is attached to, connected with, or drawn by any self-propelled or motor or mechanically driven vehicle, qualifies as a mobile tangible asset.